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SOCIAL PROTECTION AND NEW FORMS OF WORK: EXPANSION OF UNEMPLOYMENT INSURANCE BENEFITS' COVERAGE IN ESTONIA

Abstract

Ensuring social protection for people having lost their jobs is an important part of the social protection system. Although health insurance and pension insurance have traditionally been the most important social protection systems, then social guarantees (both passive and active measures) for the unemployed cannot be underestimated in the changed forms of employment. New forms of work necessitate attention to whether and how people working under new forms of employment, e.g. platform workers, can register as unemployed and whether short-term employment may worsen their standing compared to other unemployed. This article analyses the Estonian social protection system for the unemployed and the planned changes in connection with platform work.

Słowa kluczowe: bezrobotny, świadczenia z ubezpieczenia dla bezrobotnych, platforma zatrudnienia, usługi i świadczenia rynku pracy

Keywords: unemployed, unemployment insurance benefits, platform workers, labour market services and benefits

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Introduction

Social protection for the unemployed has an important role in the social protection system. Although this part of the social protection system is often overlooked, services and benefits for the unemployed become important during periods of economic downturn. Main objectives of the social protection system for the unemployed are however not only the provision of various services and benefits, but also the provision of necessary continuing training to support re-employment. New forms of work, such as platform work, can often fall outside the scope of social protection provided for the unemployed. This may be due to the lack of an employment contract or due to the remuneration received for work not meeting the minimum requirements necessary for receiving benefits.

Another important issue is the discontinuation of social protection for the unemployed. The current Estonian system mandates that an unemployed person may not do any kind of work while registered as unemployed. Any short-term work (e.g. platform work or other similar work) is not allowed. This option inevitably raises the question of whether not allowing short-term work is the best solution if we want the unemployed to retain the skills and work experience.

This article analyses the social protection system of the unemployed in Estonia, the problems of its application to platform workers and the planned changes related to the provision of social protection to platform workers in case of unemployment.

1. Principles of social protection of the unemployed

Social protection of the unemployed in Estonia can be considered to be established in 1991 (Registration 1991), when the procedure for registration as unemployed was established by a regulation of the Government of the Republic. This was a temporary measure to provide support in the event of people becoming unemployed during the economic reforms. The legal regulation of social protection of the unemployed became prescribed by law in 2000, when the Social Protection of the Unemployed Act was adopted (Unemployed 2000). This law specified the procedure for registering for unemployment, the payment of unemployment benefits and labour market services provided to the unemployed. An additional system for the unemployed was established in 2002—this was the unemployment insurance system (Unemployment Insurance 2001). In 2005, the Labour Market Services and Benefits Act (hereinafter LMBA) entered into force, on the basis of which registration as unemployed, payment of state support to the unemployed and provision of necessary labour market services to the unemployed currently take place.

In Estonia, a person is registered as unemployed if he or she is not engaged in work or activities equivalent to work. The person applying for registration as unemployed must not be engaged in any activity. It does not matter how many hours of work are done, nor is it decisive under which contract the work is performed. As already mentioned, it is important that the person is not active on just a job, but it is important that he or she is not engaged in a job-like activity either. If a person has already been registered as unemployed, any employment will lead to a situation where registration as unemployed is terminated. After the termination of employment, the person has the right to again register as unemployed.

According to the Labour Market Services and Benefits Act (§ 7 of LMBA), a specific list of situations is also prescribed in which a person is not registered as unemployed. This list highlights activities for which it can be assumed that a person will receive some remuneration for his or her activities (whether employed on a contractual basis, in the public service or self-employed) and that this will result in guaranteed employment.

If a person has a job or is engaged in an activity equivalent to a job and he or she is not registered as unemployed, the person can also be registered as a jobseeker according to the LMBS. Jobseeker status means that it is possible to get information about possible vacancies through the Unemployment Insurance Fund (§ 2 2) LMBA). No other services or benefits are offered to a jobseeker.

In addition to state benefits and services, a person registered as unemployed is also entitled to receive unemployment insurance benefits (Unemployment Insurance 2001). Receiving unemployment insurance benefit presupposes that the unemployed person has previously paid the necessary unemployment insurance contributions during the period of employment. If it is not possible to make unemployment insurance contributions, the unemployed person will not be able to receive unemployment insurance benefits later. This situation could also affect the platform workers.

2. International requirements and constitutional guarantees for the social protection of the unemployed

2.1. International requirements binding for Estonia

Pursuant to § 3 of the Constitution of the Republic of Estonia, the principles of international law are part of the Estonian legal order (Constitution Comments 2017). At the same time, the Constitution does not require the Republic of Estonia to have ratified a specific international agreement. According to the Estonian Constitution, it is sufficient if the principles are internationally agreed and the said principles are not in conflict with the Constitution of the Republic of Estonia.

Regarding social protection, Estonia is bound by two international agreements: the amended version of the European Social Charter adopted by the Council of Europe in 1996 (Charter 2000) and the European Code of Social Security adopted by the Council of Europe (Code 2004). The Republic of Estonia has acceded to these international agreements and has undertaken obligations related to, among other things, the social protection of the unemployed.

The case law of the European Committee of Social Rights has seen the Republic of Estonia been in difficulties with complying with the minimum requirements for the amount of necessary benefits provided for the unemployed. In particular, Estonia has had problems with the rate of state-guaranteed unemployment benefits. The European Committee of Social Rights has repeatedly stated that the unemployment benefit rate applicable in Estonia is “surprisingly low” and does not meet the conditions laid down in the European Social Charter (Conclusion 2004).

In addition, Estonia has repeatedly been given recommendations to improve the unemployment insurance system, as Estonia does not satisfy the right to social insurance provided for in Art. 12 of the Social Charter as regards to the adequacy of unemployment benefits. When assessing the adequacy of unemployment insurance benefits, the

Social Charter stipulates that the income replacing the previous income must not be less than 50% of the median equivalent net income of the population. In 2018, 50% of the median equivalent net income amounted to 474 euros per month, and at the same time unemployment benefit paid for 31 days was 164.61 euros. If the daily rate of unemployment benefit increases to 50% of the previous year's minimum wage, the size of the benefit would be 270 euros (for 31 days) in 2020 instead of 189 euros. Thus, the difference with the requirements of the Social Charter is reduced.

Estonia has not had any major difficulties in meeting the general requirements of the European Social Security Code, which are related to the unemployment benefit rate. Since its entry into force in 2002, the Unemployment Insurance Scheme has provided income-related benefits to the unemployed, which also meet the requirements of the European Social Security Code.

Art. 65 to 67 of the European Code of Social Security also provide for a number of options for setting the minimum unemployment benefit: the benefit rate should be at least 45% of the total previous earnings and family benefits of the standard beneficiary (husband and spouse) or reasonable in relation to the standard beneficiary's benefit. The Code provides for the possibility of calculating the allowance from the salary of a male unskilled worker or male skilled worker. According to the latest report in the Social Security Code, the replacement rate for the standard beneficiary's unemployment insurance benefit was 53.2%. The increase in unemployment benefits from 50% to 60% from the previous earnings for the first 100 days also has a positive effect on the replacement rate of the standard beneficiary calculated according to the principles of the Social Security Code.

Estonia has not undertaken to be bound by the requirements established by the International Labour Organization; according to the ILO Convention 168, the support guaranteed to the unemployed is at least 50% of the minimum wage in force in the country. So far, this requirement has not been met by the Estonian state. According to the planned change, which should enter into force on the first of September 2020, the Estonian state has undertaken that the amount of unemployment benefit is equal to 50% of the minimum wage, which was valid in the previous calendar year. By stipulating this requirement in law, Estonia gets closer to the requirements established by the United Nations. Thus, it is possible to state that Estonia has met the minimum rate of unemployment benefits established by the ILO.

In summary, although Estonia has struggled to meet the minimum international standards for ensuring social security for the unemployed, the latest amendments to the law passed by the Estonian legislator bring the respective requirements in line with the requirements of the International Labour Organisation, which dictate that the unemployment benefit rate must be 50% of the minimum wage.

It should be borne in mind that these requirements also apply to employees who do not work in traditional employment models, such as platform work or those who use an entrepreneur account (Entrepreneur Account 2020). An entrepreneur account has been created in Estonia for all those who do not want to register as self-employed or do not

want to work through a private company. Using an entrepreneur account also provides the necessary social protection, to a certain extent. Holding an entrepreneur account does not however provide necessary social protection. Entrepreneur account holder is considered to hold a job or be engaged in an activity similar to job and thus the person may receive protection in the fields of health insurance and pension insurance, but at the same time may be deprived of the necessary social protection as an unemployed person. Having a business account, and using it, amounts to the person having a job.

2.2. Constitutional guarantees

The Republic of Estonia indirectly declares itself a welfare state (Sozialstaat) in the Constitution of the Republic of Estonia. Pursuant to § 10 of the Constitution, it is also possible to prescribe other fundamental rights and freedoms which are in conformity with the principles of the rule of law and social justice (Sozialstaat) (Tavits 2016; Merusk, Tavits 2019). Although the Constitution of the Republic of Estonia does not specify what is meant more specifically by a social justice, it is still a principle of social protection that the legislator must be guided by. This principle reassures both the legislator and individuals that social protection and its principles play an important role in both the design and implementation of legislation (Constitution Comments 2017).

In addition to the above, § 28 of the Constitution is important for stating that everyone has the right to state protection in the event of old age, incapacity for work, loss of provider, or need. According to § 29 of the Constitution, the state assists the unemployed in finding a job.

In addition to the above-mentioned, § 19 of the Constitution is important for stating that everyone has the right to self-determination. Under that provision, everyone is guaranteed the freedom to conclude a contract, as well as the freedom to terminate it. This freedom is also important for the unemployed. Although the unemployed have not traditionally been given much freedom to choose where to work in the future, they still have the freedom to enter into or refuse an employment contract with a future employer. The Constitution of the Republic of Estonia does not provide for special rights intended for the unemployed.

The Constitution does not indicate whether and to what extent the corresponding benefit is guaranteed to the unemployed. Provision of the Constitution can be referenced here, according to which every person has the right to state aid in case of need. The possibility provided by the LMBA for unemployment benefits is also related to ensuring a person's minimum subsistence. Thus, this composition is also covered by § 28 of the Constitution.

Based on the above, it is possible to conclude that according to §§ 10, 28 and 29 of the Constitution, the social protection of the unemployed is covered by the idea of a social justice (Sozialstaat) as well as the state's obligation to provide the unemployed with relevant employment and training. If a person is guaranteed the freedom to choose a profession as well as a field of activity pursuant to § 29 of the Constitution, the right

of a person to choose to work through a platform must also be considered here. If a person chooses to work through a platform, it also means that he or she must be provided with the necessary social protection. Freedom of choice in terms of employment and economic activity cannot lead to the loss of social security protection or limited access to it. Thus, if the Constitution guarantees freedom of choice in economic activities, it must also correspond to the freedom to be protected by social security.

3. Legal status of the unemployed

3.1. Rights and obligations of the unemployed

If a person is registered as unemployed, the unemployed person has the right to receive both active and passive labour market measures from the Unemployment Insurance Fund (§ 1 LMBA).

The most important obligation of a person registered as unemployed is to actively look for a job. When a person is registered as unemployed, an individual job search plan is prepared for the unemployed. This plan would include information on the skills and education of the unemployed and the labour market services that the unemployed need in order to be competitive in the labour market. The obligation of the unemployed to actively seek for a job means the obligation of the unemployed to turn to the Unemployment Insurance Fund at least once in thirty days. This obligation is necessary in order to get an overview of how the search for a job of unemployed has gone. As a rule, the unemployed person has to turn to the Unemployment Insurance Fund in person. Only during the first three months of registration as unemployed can the unemployment fund be contacted using the electronic identification mode.

One of the important components of an individual job search plan is also the preferences of the person registered as unemployed regarding a possible new job. According to the LMBA, the term “suitable work” is important here. The criteria for suitable work are divided into two parts: the first 20 weeks and the later period. During the first twenty weeks, the unemployed person can refuse a job if the following criteria are not met: 1) the job meets the jobseeker’s qualifications and education, 2) the salary offered is at least 60% of the unemployed person’s last salary, 3) it takes a maximum of two hours to reach the place of job by public transport. If the unemployed person does not find a job during this time, the criteria for suitable work will change. After the first 20 weeks, 1) the unemployed person must accept every job he or she is able to do, and 2) the wage offered to the unemployed person for work is at least equal to the minimum wage.

The measure of suitable work is important if there is a wish to end the unemployment status. If an unemployed person has refused a suitable job three times without good reasons, this may result in the expulsion as unemployed. It must be borne in mind that if a person is deleted from the register as unemployed, he or she may re-register as unemployed after a period of three months has elapsed.

3.2. Passive labour market measures

Passive labour market measures can be divided into two sections:

1. allowance paid by the state which helps the unemployed to ensure a minimum income
2. unemployment insurance benefit.

3.2.1. Subsidies paid by state

The support provided by the state is the unemployment allowance. Unemployment allowance is paid mainly if two conditions occur simultaneously: 1) the unemployed person has no income in the amount of unemployment subsidy 2) there is a requirement that the unemployed person must have been employed or engaged in work-equivalent activities for at least 180 days before being registered as unemployed. The length of receiving unemployment subsidies is 270 days. If this period ends, the unemployed person will no longer be able to receive unemployment subsidies from the Unemployment Insurance Fund. In addition to the above, an unemployed person can also receive a study scholarship for the time he or she participates in the training organized by the Unemployment Insurance Fund.

The amount of unemployment subsidy has been one of the amounts the European Social Rights Committee has criticized Estonia for not complying with the requirements of the European Social Charter. Until now, its size depended on the possibilities of the state budget. As of September 2020, the amount of unemployment allowance is in accordance with international requirements and is 50% of the minimum wage of the previous calendar year in Estonia.

3.2.2. Unemployment insurance benefit

Unemployment insurance benefit is a subsidy that consists of insurance payments paid by the employer and the employee. In the case of this insurance scheme, an important goal is to ensure that the unemployed person receives an insurance subsidy that depends on their income during the job search. In order to receive unemployment insurance subsidy, two conditions must be met: 1) it is necessary to register as unemployed and meet all the requirements that a person registered as unemployed must meet (active job search obligation, obligation to accept suitable work), 2) necessary insurance period. The insurance period arises if the insurance payment prescribed by law has been paid. According to the Unemployment Insurance Act (Unemployment Insurance 2001), the precondition for receiving unemployment insurance subsidy is the existence of at least 12 months of insurance period. The insurance period arises when the unemployment insurance premium is paid regularly. In order to better ensure access to unemployment subsidies, even in the case of short-term employment, the required insurance period of 12 months can be completed during a thirty-month insurance period. There is no minimum rate of unemployment insurance benefit, but the Unemployment Insurance Act prescribes the maximum rate of unemployment insurance benefit.

4. Social protection of the unemployed and new forms of employment

4.1. Platform work and social protection of the unemployed

There has been a lot of discussion about the new forms of working, which are related to the employment status of the platform's employees (Risak, Dullinger 2018). Previous understandings of social security protection are often related to the concept of employee and employment relationship (Mélypataki 2020). This means that social security protection must be guaranteed to all those who work under an employment contract. Those workers whose legal status was defined by other contractual relationship and by other economic activities are generally excluded from the scope of social security protection (Tavits 2019).

Working on the platform and the provision of the services through the different platforms do not require the conclusion of an employment contract, but inevitably raise the question of whether and how the necessary social security protection must be provided (e.g. health insurance, pension insurance, unemployment). There are a number of different obstacles for platform staff to not qualify under the current social security legislation—there is no employment relationship, the employment relationship is short-term. However, income is also variable and the income earned by the work on the platform often does not provide the necessary access to social protection systems.

In order to facilitate the access of the platform's employees to various social protection systems, Estonia has created a new option—an entrepreneur account. An entrepreneur account is for those people who do not officially register as an entrepreneur. An entrepreneur account provides an opportunity to pay the necessary social security taxes and gain access to health insurance and pension insurance. Although Estonian social security law does not prescribe a minimum amount of insurance payments, the amount received in the business account must be higher than the Estonian average monthly salary (approx. 1,400 euros per month). Having and using an entrepreneur account is also important for the content of social protection for the unemployed. If a person has an entrepreneur account and uses it in business, it is not possible for such a person to register as unemployed. Having an entrepreneur account is considered to be an activity equivalent to doing work, insofar as the payment of unemployment allowance requires registration as unemployed, holding an entrepreneur account also does not provide an opportunity to receive unemployment subsidies. Thus, on the one hand, a business account provides access to health insurance and pension insurance but deprives a person of the necessary social protection provided through unemployment insurance (Entrepreneur Account 2020). However, if a person wants to receive the necessary social protection through unemployment insurance, he or she must give up an entrepreneur account. Thus, the platform worker must inevitably have to choose between different social protection systems, as not all social protection systems intended for people working under an employment contract can be used by platform workers.

4.2. Additional protection of the platform worker in case of unemployment

As discussed above, Estonia's current law of unemployment social protection has so far been based on the principle that a person can be registered as unemployed if he or she does not have any job or activity equivalent to work. Any work done during the period of registration as unemployed leads to the termination of the social status of the unemployed person at the time of the job, and when the job (even short-term) has ended, it is possible to register as unemployed again. This situation has been considered difficult as it requires a number of administrative procedures and does not encourage the unemployed to return to work in the short term so that they do not lose their habit and ability to work. Making short-term job offers (e.g. sharing a travel service or working as a courier for a short time) means the same situation—registration as unemployed must be stopped and a person can re-register as unemployed after she or he has finished working.

In order to simplify short-term working, as well as seasonal working, the Estonian legislator has changed the current social protection system for the unemployed and given the platform employees and seasonal workers the opportunity to be registered as unemployed and work and earn income at the same time. Giving such an opportunity also means an ideological change—in order to be registered as unemployed a person do not have to be completely unemployed anymore, but small-scale work is also allowed.

According to the changes in the social protection system of the unemployed, up on five days in a calendar month can be worked for a short period during the period of registration as unemployed, but not more than 12 calendar months in a 24-months period. In the case of such employment, it is irrelevant whether the work is performed on the basis of an employment contract, another contract under the law of obligations or is in the public service for a short time. In this way, this possibility can be used when it is necessary to use a substitute during vacations in the normal course of work and employment. Platform workers also have this opportunity. At the same time, registering as unemployed immediately guarantees the opportunity to be registered in the health insurance fund and gain access to health insurance services. Short term working of an unemployed does not worsen the situation of an unemployed.

Various analyses (Holmlund 2015) have found that not allowing short-term or small-scale work while unemployed can prolong the duration of unemployment and also reduce the motivation of the unemployed to look for job and, in general, increase unemployment, including long-term unemployment (Vörk, Paulus 2006). The longer a person is away from the labour market, the more the relation with the labour market decreases, the habit of working and the correspondence of human skills to the needs of the labour market, so encouraging participation in employment contributes to the development of human skills, knowledge and networks and creates the preconditions for getting permanently employed (Laurimäe et al. 2019). In addition, allowing temporary employment while unemployed can reduce informal employment, which in turn has a positive effect on people's social guarantees.

The above-mentioned change affects all registered unemployed—according to the Estonian Unemployment Insurance Fund, as of 24 May 2020, there were 50,596 registered unemployed and the registered unemployment rate reached 7.8% (at the end of 2019, there were 32,130 registered unemployed). If people registered as unemployed are able to work temporarily to the extent of the calendar days and remuneration specified in LMBA, then the social guarantees associated with their unemployment status as well as the right to receive unemployment insurance benefit or unemployment allowance will be preserved.

According to Eurostat, in 2019 the share of the temporary employed population in total employees was 2.4% (at the same time the EU-27 average was 11.9%). In comparison of years, the Estonian indicator was the highest in 2011, when it reached 3.9%. This illustrates the fact that allowing temporary employment to emerge from the economic crisis can benefit both the unemployed and the employer.

According to the 2019 Estonian Labour Force Survey, in Estonia there were a little more than 19,100 temporary workers aged 15–64, including almost 17,700 employees. More than half of the cases involved probationary work, but in 24% of cases it was seasonal work and in 13% of cases it was casual work. There were more temporary workers in manufacturing, wholesale and retail trade (including repair of motor vehicles) and construction. There were more service and sales employees, unskilled workers, but also top specialists. The expected duration of temporary work was mostly 1 to 3 months.

In addition to the time limits for employment, the social security scheme provides for the extent to which such short-term employment can be remunerated. Pursuant to the amendments of the LMBA, the remuneration for temporary employment in the case of one employment and in one calendar month is not more than 40% of the minimum monthly salary of the previous calendar year.¹

If both criteria are exceeded in the case of a person registered as unemployed:

- 1) the period of employment in one calendar month or during a period of 24 months, or
- 2) the amount of the fee exceeds the above-mentioned limits.

Both of these reasons are the basis for ending the social status of the unemployed. At the same time, the general rule remains: if the above-mentioned circumstances cease to exist, a person has the right to register as unemployed again.

This option is a new opportunity, especially for platform staff performing short-term tasks. The new rules will take effect on 1 September 2020. Pursuant to § of the LMBA, it is stipulated that the impact assessment of this measure will be performed by year 2022.

The short-term employment prescribed by LMBA is not taken into account as unemployment insurance period. This means that short-term employment is not taken into account separately and these periods are also not summarized.

Here we have to return to an entrepreneur account and short-term employment. In case of short-term employment, an entrepreneur account can be created and the

¹ In 2020, the amount of this remuneration is 216 Euros, based on the fact that in 2019 the minimum monthly salary was 540 euros.

amount provided for the employment can be transferred to the entrepreneur account. However, as already mentioned above, the possession of an entrepreneur account duly excludes the social status of the unemployed, and the possession of an entrepreneur account is also the legal basis for the termination of the social status of the unemployed. Consequently, it is up to each individual to decide whether he or she wishes to receive protection through an entrepreneur account or whether he or she wishes to receive such protection through registration as unemployed with an Unemployment Insurance Fund.

Conclusions

The minimum requirements for social protection of the unemployed are regulated by various international norms. At the same time, the Constitution of the Republic of Estonia does not prescribe various provisions that would regulate the social protection of the unemployed and provide for various benefits and services for the unemployed. The social protection of the unemployed is based on the fact that, as a general rule, a person works either on the basis of an employment contract or is employed in the public service. Short-term workers are not covered by social protection for the unemployed. However, if a person is registered as unemployed but wants to work for a short period of time (e.g. either seasonally or through a platform), he or she must give up the status of unemployed. The new amendments to the law adopted by Estonian parliament provide opportunities for people to work for a short time if they are registered as unemployed and do not lose their status as unemployed, nor do they lose services and benefits related to the social status of the unemployed. In particular, this regulation allows platform workers to perform short-term tasks without compromising their social protection.

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